

MEDICAL BOARD OF CALIFORNIA
State of California

In the Matter of the Accusation)	OAH No. L-60597
Against:)	Case No. D-4797
)	
STUART MARK BERLIN, M.D.)	
31926 Watergate Court)	
Westlake, California 91361)	
)	<u>DECISION</u>
Physician's and Surgeon's)	
Certificate No. G-48756,)	
)	
Respondent.)	

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the **Medical Board of California** as its Decision in the above-entitled matter.

This Decision shall become effective on September 14, 1995.

IT IS SO ORDERED this 15th day of August, 1995.

MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 

rfm

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	No. D-4797
Against:)	
)	OAH No. L-60597
STUART MARK BERLIN, M.D.)	
31926 Watergate Court)	
Westlake, California 91361)	
)	
Physician's and Surgeon's)	
Certificate No. G-48756,)	
)	
Respondent.)	

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Van Nuys, California, on the following days in 1995: May 22, June 5, 6 and 7.

Rosa Mosley, Deputy Attorney General, represented the complainant.

Respondent appeared in person and was represented by Theodore Cohen, Attorney at Law.

Oral and documentary evidence and evidence by way of stipulation and official notice was received. The record was held open to allow respondent to file additional documentary evidence. Same was received and filed on June 20, 1995 and the case then deemed submitted.

The Administrative Law Judge now finds, determines, and orders as follows:

PARTIES AND JURISDICTION

1

Kenneth J. Wagstaff, then Executive Director of the Medical Board of California (MBC or Board) brought subject accusation in said official capacity.

1

Complainant, Dixon Arnett, the Executive Director of MBC brought the Second Amended and Supplemental Accusation solely in said official capacity.

(A) On or about August 30, 1982, Physician's and Surgeon's Certificate No. G-48756 was issued by the Board to Stuart Mark Berlin, M.D., respondent herein.

(B) Said Certificate No. G-48756 had been in full force and effect until it was suspended on June 16, 1992 pursuant to an order for petition for interim suspension. Said order, issued by an Administrative Law Judge of the Office of Administrative Hearings, states as follows:

Physician's and Surgeon's Certificate No. G48756 issued to Stuart Mark Berlin, M.D. is suspended pending completion of the hearing on this Order, including such time as is necessary to issue the written decision required by Government Code section 11529(g). During such time, Respondent Stuart Mark Berlin, M.D. shall engage in no act for which said certificate is required.

(C) Respondent's license number SA 14082 to supervise physician assistants was also suspended on June 16, 1992 pursuant to order.

(D) Thereafter, on July 2, 1992 the parties did stipulate in pertinent part as follows:

This stipulation to an interim suspension of respondent's license shall remain in effect until the matter is resolved by the Medical Board of California through the administrative process or by further stipulation of the parties.

(A) On complainant's motion the First Amended Accusation was dismissed and no Findings are made thereon.

(B) All prehearing requirements have been met. Jurisdiction for this proceeding does exist.

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FINDINGS OF FACT

RE

ACCUSATION

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FINDINGS RE: HEIDI B.

(A) On [REDACTED] Heidi B. gave birth to a daughter;

(B) On January 27, 1991, respondent, Heidi B. daughter's pediatrician, visited Heidi B. at the hospital. She was breast-feeding her baby daughter when respondent came into the room. She told him she was having trouble breast feeding and he said he would help.

(C) Respondent began massaging Heidi B.'s breast, saying that usually gets the milk flowing. She thought, subjectively but reasonably, that all pediatricians massaged a mother's breast if the mother was having problems with breast feeding.

(D) On January 28, 1991, Heidi B. called respondent to ask him about a lactation specialist. He said he could help. He then came to Heidi B.'s home for a home visit.

(E) When he was at Heidi B.'s home, he weighed her daughter, then closed the bedroom door, placed the scale behind it and closed the blinds. He began to massage Heidi B.'s breasts. He told her that she should get her husband to suck her breast. She told him that her husband probably would not do that.

(F) Respondent then said, "Could I.....Oh never mind." Then without any warning, he started sucking the breast he was massaging. He was making a moaning sound while he sucked Heidi B.'s breast.

(G) He stopped briefly to say, "Oh by the way, this is just between you and I." Then he started to suck her breast again. Heidi B. pushed him away. He was kneeling beside the bed, breathing heavily.

(H) Approximately one year later, during a telephone conversation that was tape recorded, respondent agreed with Heidi B. that massaging her breast was a sexual gratification for him.

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(A) Respondent's conduct set forth in Finding 5 served no medical purpose and was of no benefit to the nursing mother. Reasonable inferences from the whole of the record did establish that said conduct subjected Heidi B. to embarrassment, anxiety, anger and indignity.

(B) Said conduct set forth in Finding 5 is substantially related to the qualifications, functions and duties of a physician.

(C) Said conduct set forth in Finding 5 constitutes sexual abuse and sexual misconduct and, accordingly, said conduct constitutes unprofessional conduct.

FINDINGS RE: JANINE H.

(A) Respondent was the pediatrician for Janine H.'s daughter, N., born [REDACTED] and her son J., born [REDACTED].

(B) On June 21, 1991, Janine H. took her son to be examined by respondent for an ear infection. On the same day she had trouble walking because of back pain.

(C) During the visit, respondent appeared to notice Janine H.'s back pain. While she was standing, holding her baby J., respondent began to massage her back, then her buttocks. He touched and massaged her on her back and buttocks without her permission.

(D) The next day, June 22, 1991, respondent phoned Janine H. from his car phone and offered to come to her home to examine her son J. When he came to her home, he asked if she wanted him to massage her back and she told him that she did not. Respondent then sat down on the couch and began to move closer and closer to Janine H. until he was practically on top of her. Janine H. kept moving away until she ended up sitting on the floor. Respondent stayed at Janine H.'s home for over 1 and 1/2 hours. He did not examine her son during this visit. He did not charge for this visit.

(E) On July 1, 1991 Janine H. took her son to be examined by respondent for dry spots on his chest. After respondent put lotion on J's chest, he took Janine B.'s arms and rubbed lotion onto them. Then he took her shoulders, turned her around, lifted her shirt in back and proceeded to rub lotion onto her back, chest and breasts under her bra. This lasted for approximately 30 seconds. Respondent did not have permission to rub lotion on Janine H. or to massage her back, chest or breasts.

(F) On July 27, 1991 Janine H. took her daughter N. to be examined by respondent for an ear infection. She had ear pain also. Respondent said he would check Janine H. for ear pain as well. During his exam of Janine H. for ear-pain, he suddenly dropped a stethoscope down inside her blouse. He reached inside of her blouse and grabbed her breasts, squeezing them quickly 2-3 times. Before she realized what he was doing, respondent peered down the back of Janine H.'s pants to see the incision from her back surgery. Respondent did all of this without her permission. He charged for this visit.

(G) Janine H. was frightened by respondent's behavior.

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(A) Respondent's conduct set forth in Finding 7 served no medical purpose and was of no benefit to the nursing mother. Reasonable inferences from the whole of the record did establish that said conduct subjected Janine H. to embarrassment, anxiety, fear and indignity.

(B) Said conduct set forth in Finding 7 is substantially related to the qualifications, functions and duties of a physician.

(C) Said conduct set forth in Finding 7 constitutes sexual abuse and sexual misconduct and, accordingly, said conduct constitutes unprofessional conduct.

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FINDINGS RE: BREN D.

(A) On June 9, 1991, respondent was the pediatrician for Bren D's sons, A., born [REDACTED] and D., born [REDACTED]. He had been A's pediatrician since 1989.

(B) On Sunday, June 9, 1991 Bren D. called respondent to see if he could examine her left breast to determine whether or not it had become abscessed. She had been in great pain for several days due to mastitis (inflammation in the mammary gland). She called respondent because her regular OB/GYN physician was not available. Respondent told her to meet him at his office. Bren D. was 37 years old at the time.

(C) When she went to respondent's office he told her to undress, put on a hospital gown and lie on her back.

(D) During the examination, respondent began to vigorously massage both her breasts. He stroked her nipples with a circular motion, using the palms of his hand. He said that her left breast was not abscessed. He said she appeared to be tense.

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(E) Respondent took a blood sample and while they were waiting for the results, he instructed her to lie on her stomach so he could give her a back rub.

(F) Respondent then vigorously massaged Bren D.'s shoulders and back and partially pulled down her panties to purportedly remove a bandage. He then massaged her buttocks and inner thighs. He did not have permission to do this.

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(A) Respondent's conduct set forth in Finding 9 served no medical purpose and was of no benefit to the nursing mother. Reasonable inferences from the whole of the record did establish that said conduct subjected Bren D. to embarrassment, anxiety, and indignity.

(B) Said conduct set forth in Finding 9 is substantially related to the qualifications, functions and duties of a physician.

(C) Said conduct set forth in Finding 9 constitutes sexual abuse and sexual misconduct and, accordingly, said conduct constitutes unprofessional conduct.

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FINDINGS RE: ANDREA N.

(A) Respondent was the pediatrician for Andrea N.'s daughter, A, born [REDACTED].

(B) Andrea N. first encountered respondent during a birth preparation class she attended with her husband approximately two months prior to the birth of her daughter. During the birthing class, respondent mentioned that he made house calls for the first month of the infant's life so that the child would not be exposed to germs found in his office. Since he sounded like a concerned and very caring doctor, Andrea N. and her husband decided to use him as their child's pediatrician.

(C) The day after A's birth, respondent came to the hospital for a visit. When he came to Andrea N.'s hospital room, he kissed her on the lips and asked if she wanted to go see the baby. Andrea N. was dressed in a "teddy" and mesh underwear. She asked him to hand her robe to her. She felt uncomfortable when she stood up to put it on because it seemed respondent was staring at her breasts.

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(D) About a month later, respondent made a scheduled home visit for A's one month check up. When he arrived, Andrea N. was in the process of nursing her baby A. She was wearing a regular bra so she had to pull the strap off her shoulder and the cup off her breast; her breast was exposed. She felt uncomfortable and told respondent that she was going upstairs to put on a shirt. Respondent told her to continue feeding and he would ask her a few questions.

(E) They discussed the problems she had with breast-feeding and that she thought A was not getting enough milk. Respondent asked if she was massaging her breasts every day to help get the milk down. She told him that she was not doing that. He asked her if she knew how to massage her breasts to get the milk to "let down". When she told him that she did not, he said that he would show her how to do it. She was very uncomfortable with his suggestion. She went upstairs and put on a shirt.

(F) When she came back downstairs, respondent sat down next to her. He asked her to take off her shirt and she did. He then began massaging her right breast; he put his right hand underneath her breast and his left hand on the top of the breast. She kept looking at his face to gauge his reaction. After a few seconds, she started to squirm because it hurt and she felt uncomfortable. She told him to stop as she could do it herself. He remained sitting right next to her.

(G) She then picked up her baby and held her in front of her to shield her nakedness. Respondent reached around her baby, then under her left arm and started massaging her left breast. She began to squirm and told him that it hurt and to stop. He said that it would be a lot easier if she would lie down. He took his hands off her breast and moved over as if to let her lie down. She tried to remain clam, telling him that it was "OK" and that she knew how to do it. Respondent's face was very red and he began to talk fast. He said he needed to write a prescription, but could not find a prescription pad. He said, "I'll just send you a prescription in the mail." He went to his car and came back into her house unannounced and without knocking. He said, "I found the prescription pad." He wrote a prescription for vitamins for A and for a breast pump for Andrea N. He then left.

(H) Andrea N.'s next office visit occurred during the first week in July, 1991 when A was six weeks old. After respondent examined A, he walked up behind Andrea N and began to massage her bare shoulders. She was wearing a long-sleeved T-shirt with a boat neck which is open around the collarbone and upper shoulders. He had his hands on her neck and shoulders. When she stiffened, he stopped the massage and began to babble about giving her some first aid kits for the baby.

(I) On the first month's visit, the hospital visit, and on the visits to her home, respondent squeezed A.'s breasts to see if they were producing milk. He depressed the skin around the nipple, then pinched forward like he was popping a whitehead. He said, "Let's see if she still has milk."

(J) In February, 1992, Andrea N. attended a "Mommy and Me" class at an Elementary School. Respondent was at the meeting with his eleven month-old son. Andrea N thought it was unusual for him to bring his son to a meeting where the babies were much younger. There was a class available for older babies.

(K) During the class when Andrea N. was asked to introduce herself, she told the class that her baby's pediatrician had molested her and that he was present in the room. Respondent did not deny her accusations at that time.

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(A) Respondent's conduct set forth in Finding 11 served no medical purpose and was of no benefit to the nursing mother. Reasonable inferences from the whole of the record did establish that said conduct subjected Andrea N. to embarrassment, anxiety, anger, distress and indignity.

(B) Said conduct set forth in Finding 11 is substantially related to the qualifications, functions and duties of a physician.

(C) Said conduct set forth in Finding 11 constitutes sexual abuse and sexual misconduct and, accordingly, said conduct constitutes unprofessional conduct.

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The conduct set forth in Findings 5, 7, 9, 11, and each of same, does constitute an extreme departure from the standard of medical care and the standard of medical practice, and is, therefore, gross negligence and, accordingly, said conduct constitutes unprofessional conduct.

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The negligent (gross) conduct set forth in Findings 11, 9, and 7 are each of them, and in combination, are a repeat of the negligent (gross) conduct set forth in Finding 5 and, therefore, does constitute repeated negligent acts and, accordingly, does constitute unprofessional conduct.

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(A) By his conduct set forth in Findings 5, 7, 9 and 11 respondent directly and indirectly misrepresented to Heidi B., Andrea N., Bren D., and Janine H., mothers of his pediatric patients that his conduct as set forth respectively, in said Findings, was necessary and was part of their treatment and/or treatment for their infants.

(B) Respondent falsely represented to Heidi B. and Andrea N., mothers of his pediatric patients, that he (respondent) needed to make home visits to avoid contaminating the infants with germs from his office where he regularly examined and treated his pediatric patients.

(C) Respondent's conduct set forth in paragraphs (A) and (B) does constitute the commission of acts involving dishonesty and corruption during the course of respondent's practice.

FINDINGS OF FACT

RE

SECOND AMENDED ACCUSATION

VENTURA CONVICTION

(A) On or about July 23, 1992 a complaint was filed in the matter of *People v. Stuart Mark Berlin*, Case No. 92C006952, in the Ventura County Municipal Court, charging respondent with committing sexual battery in violation of Penal Code section 243.4, subdivision (d).

(B) On October 30, 1992, respondent was convicted after trial by jury, of three counts, sexual battery upon said Bren D., and two others: Marie C and Elsfrieda M., of violating Penal Code section 243.4, subdivision (d), and was ordered to serve 180 days in the county jail, was fined \$2000 and was placed on three years probation.

LOS ANGELES CONVICTION

(A) On or about March 25, 1992, a complaint was filed in the matter of *People v. Stuart Mark Berlin*, Case No. 92C00264, in the Municipal Court of Malibu Judicial District, County of Los Angeles, charging respondent with committing sexual battery in violation of Penal Code section 243.4, subdivision (d).

(B) On October 25, 1994, respondent was convicted pursuant to a plea of nolo contendere of one count (sexual battery upon Andrea N.) of violating Penal Code section 243.4, subdivision (d) and was ordered to serve 30 days in the county jail and was placed on three years probation.

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The crimes set forth in Finding 16 and 17, and each of them, are substantially related to the qualifications, functions, or duties of a physician and surgeon.

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No evidence was proffered by complainant in support of the cost, by MBC, of the investigation and prosecution of subject matter.

SUPPLEMENTAL FINDINGS

RE

PUBLIC INTEREST AND REHABILITATION

20

Respondent, 38 years of age, received a degree in chemistry from Hamilton College and thereafter received a medical degree from New York University. He completed, in 1984, a 3 year pediatric residency at Los Angeles Children's Hospital. During that residency he had an affair (sex) with the mother of one of his pediatric patients. After the residency he worked, as a pediatrician, at Cigna Health Plan for approximately 3 years before being asked to resign for "complaints of touching patients". The then BMQA did an apparent "evaluation" (investigation) of that circumstance but no disciplinary action was filed. After said resignation he became a member of Pediatric Affiliates in the San Fernando Valley, and in 1988, was asked to and did leave as the result of "inappropriate" sexual behavior. Thereafter, he entered private practice in Ventura County, first with others and then, in 1989, on his own. The conduct set forth in Findings 5, 7, 9 and 11 occurred during that private practice and after notice to BMQA (Board of Medical Quality Assurance - MBC's predecessor) of respondent's prior abuse of patients. During the course of his said sexual abuse of said nursing mothers, respondent had frequent sexual contact, including cunnilingus, with prostitutes.

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As a result of a self-described "sexual addition" (not established to be other than a colloquial term and a term not used by properly trained licensed professionals) respondent has been engaged in therapy since approximately 1987. The therapy has been "eclectic" and geared, for the most part, to those who have abused substances (alcohol or drugs or both). Recently, part of said therapy included the following:

(A) On August 22, 1991 he entered and completed a 4 week-treatment program for "sexual dependency" in Minnesota at Golden Valley Hospital.

(B) Immediately thereafter he entered and completed the 8 week Talbot Program in Georgia and a 4 week course of therapy at River Oaks, Louisiana.

(C) He was evaluated for the MBC's diversion program for impaired physicians and admitted thereto in December 1991. He continued therein until, three years hence, he was phased out. Respondent was cooperative with the Board.

It was not established that any of the therapy, including said recent therapy, has diminished the risks presented by respondent to lactating (nursing) mothers. Further, given the recent criminal convictions set forth in Findings 16 and 17, it was not established that said therapy has been rehabilitative.

(A) As a result of said Ventura conviction respondent did serve 115 days of jail time and was placed on 3 year formal probation on certain terms and conditions. As a result of said Los Angeles conviction respondent did serve 6 days of jail time. One condition of the Ventura probation requires respondent to "participate as directed in any treatment program designated by the probation officer."

(B) Respondent has been and presently is under therapy and counseling at a clinical psychology facility (clinic) as result of said court ordered condition. The therapy commenced approximately two years ago and is on-going (one session of one and one-half hours per week) at the Pacific Professional Associates Clinic. A number of psychometric tests were administered by the clinic but no specific diagnosis was made and it was not established that other than non-specific counseling has occurred. The court (or probation officer thereof) has provided no oversight of the "therapy". Accordingly, it was not established any of that said "therapy" has diminished respondent's risk to lactating mothers or was rehabilitative given the criminal conduct set forth in Findings 16 and 17.

(C) At present respondent is undergoing treatment by a licensed physician (psychiatrist) consisting, primarily, of dialogue (talking back and forth). The treatment involves no medication, now, or at any time during the course of treatment dating back to December, 1991. During that time period respondent has seen the psychiatrist, for therapy, on a average of once or twice per week. It was not established that that therapy, general in nature, has diminished respondent's risk to nursing mothers.

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The passage of time from the recent conduct and recent convictions to the present has not allowed a record of clear and convincing rehabilitation. In particular:

(A) Respondent, in aggravation, engaged in conduct which was - from time to time - sociopathic, compulsive, deceitful, manipulative and predatory. Further, he frequented prostitutes during the time spanning his abuse of nursing mothers. His mouth which sucked at a prostitute's genitalia also sucked the same breast to be suckled by a pediatric patient. That conduct is depraved.

(B) Respondent, in aggravation, abused victims (nursing mothers) who were particularly vulnerable in that they had entrusted themselves and their babies into respondent's care while the victims were alone with respondent. Further, in aggravation, respondent took advantage of a position of trust and confidence to commit the offenses.

(C) Respondent has some awareness of the harm he has caused to his victims. That awareness was the result of the criminal justice system and not the result of any therapy received, to date, or of any intervention by BMQA. Respondent's awareness is not yet significant awareness. He does not, presently, fully comprehend the harm that he has caused to the four mothers set forth in these Findings and is, not yet, contrite.

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Having served jail time and reentered society respondent is now engaged in the normal civil conduct of day to day life and responsibilities (caring for his children, reading, engaging in domestic duties). Presently he is under care of a competent, concerned and caring physician. Further respondent has been ably counselled by his attorney of record, a competent, concerned and caring lawyer.

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DETERMINATION OF ISSUES

I

(A) Business and Professions Code (BPC) section 2234 provides that the Division of Medical Quality of the Medical Board of California shall take action against a holder of a physician and surgeon certificate who is guilty of unprofessional conduct. Unprofessional conduct includes, in pertinent part, the following:

BPC section 2234(b): gross negligence.

BPC section 2234(c): repeated negligent acts.

(B) BPC section 726 provides that the commission of any act of sexual abuse, misconduct or relations with a patient, client or customer which is substantially related to the qualifications, functions or duties of the occupation for which a license was issued constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under Division 2 of said Code.

(C) Division 2 of the BPC includes the licensing of physicians and surgeons by the Medical Board of California.

II

Cause does exist for discipline of respondent's license pursuant to BPC for violations of the following sections of said Code:

(A) Section 726 by reason of Findings:

- (1) 5 and 6, collectively
- (2) 7 and 8, collectively
- (3) 9 and 10, collectively
- (4) 11 and 12, collectively

(B) Section 2234(b) by reason of Findings:

- (1) 5 and 13, collectively
- (2) 7 and 13, collectively
- (3) 9 and 13, collectively
- (4) 11 and 13, collectively

(C) Section 2234(c) by reason of Finding 14.

(G) Sections 2234(a), 2234(e) and 480(a)(2) by reason of Finding 15.

(H) Section 2236 and 490 by reason of Findings 16 and 18.

(I) Section 2236 and 490 by reason of Findings 17 and 18.

III

No cause exists for any award of costs pursuant to BPC section 125.3 by reason of Finding 19.

IV

All motions and arguments not affirmed or denied herein, or on the record, are found not to be established by the facts or the law and are, accordingly denied.

V

(A) The objective of an administrative proceeding relating to discipline, if any, is to protect the public; to determine whether a license holder has exercised his privilege in derogation of the public interest. Such proceedings are not for the primary purpose of punishment Camacho v. Youde (1979) 95 Cal.App.3d 161, 165; Ex Parte Brounsell (1778) 2 Cowp. 829, 98 Eng. Rep. 1385.

(B) The Medical Board of California, in large measure, is a regulatory agency mandated by pertinent legislation to regulate the profession of physicians and surgeons consistent with, and in furtherance of said public interest.

(1) The evidentiary record of this matter revealed that BMQA had notice of respondent's abuse of patients or clients prior to his abuse of the persons set forth in this decision but failed to do that which was necessary to protect the public interest.

(2) The legislature has, by statute, recently restructured the MBC, as successor of BMQA, and mandated MBC fulfill its regulatory function to the end that it operate with sound public policy to met the public need and sustain the public good. Of significance, in light of paragraph (B) (1) above, is the legislative note to BPC section 2220:

NOTE: The 1989-90 Regular Session of the Legislature declares that the physician discipline system administered by the board's Division of Medical Quality is inadequate to protect the health, safety, and welfare of the people of California against incompetent or impaired physicians....

VI

During the course of any physician-patient or physician-client relationship the physician is in a position of special trust toward the client or patient. The patient or client is in a situation of vulnerability. The patient, presumptively, has special confidence that the physician will not abuse that trust. By his conduct set forth in Findings 5, 7, 9 and 11 respondent breached the special trust of four vulnerable nursing mothers. By such conduct respondent undermined the overall integrity of his practice and, aside from the violations of law set forth in Determination II, respondent dishonored his profession and breached the ethics of his profession.

VII

In light of the foregoing, and by reason of the nature of the violations set forth in Determination II combined with the absence of rehabilitation, the order which follows is consistent with the public interest and is consistent with the legislature mandate governing the operation of the MBC.

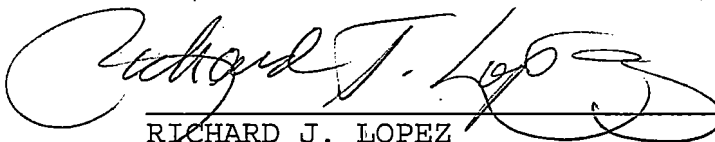
ORDER

1. Certificate Number G-48756, previously issued to Stuart Mark Berlin, M.D., is hereby revoked.

2. License Number SA 14082 to supervise physician assistants, previously issued to Stuart Mark Berlin, M.D., is hereby revoked.

Dated:

28 June 1995



RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

1 DANIEL E. LUNGREN, Attorney General
of the State of California
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5 Attorneys for Complainant
6

7 **BEFORE THE**
8 **MEDICAL BOARD OF CALIFORNIA**
9 **DIVISION OF MEDICAL QUALITY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation
Against:

12 STUART MARK BERLIN M.D.
13 31926 Watergate Court
Westlake, California 91361

14 Physicians and Surgeons Certificate
15 No. G-48756,

16 Respondent.
17

NO. D-4797

A C C U S A T I O N

18 The Complainant alleges:

19 **PARTIES**

20 1. Complainant, Kenneth J. Wagstaff, is the Executive
21 Director of the Medical Board of California (hereinafter the
22 "Board") and brings this accusation solely in his official
23 capacity.

24 2. On or about August 30, 1982, Physicians and Surgeons
25 Certificate No. G-48756 was issued by the Board to Stuart Mark
26 Berlin, M.D. (hereinafter "respondent"), and at all times relevant
27 to the charges brought herein, said license has been in full force

1 and effect. His current license expires October 31, 1993.

2 JURISDICTION

3 3. This accusation is brought under the authority of
4 the following sections of the California Business and Professions
5 Code (hereinafter the "Code"):

6 4. Sections 2003 and 2004 of the Code provide, in
7 pertinent part, that the Division of Medical Quality (hereinafter
8 the "Division") within the Medical Board of California is
9 responsible for the enforcement of the disciplinary provisions of
10 the Medical Practices Act, for the administration and hearing of
11 disciplinary actions, for carrying out disciplinary actions
12 appropriate to findings made by a medical quality review committee,
13 the division or an administrative law judge, and for suspending,
14 revoking or otherwise limiting certificates after the conclusion
15 of disciplinary actions.

16 5. Section 2227 provides that the Board may revoke,
17 suspend for a period not to exceed one year, or place on probation,
18 the license of any licensee who has been found guilty under the
19 Medical Practice Act.

20 6. Section 2234 of the Code provides, in part, that the
21 Division shall take action against any licensee who is charged with
22 unprofessional conduct.

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1 CAUSES OF ACTION

2 I

3 SEXUAL ABUSE AND MISCONDUCT

4 7. Section 726 of the Code provides that the commission
5 of any act of sexual abuse, misconduct, or relations with a
6 patient, client, or customer which is substantially related to the
7 qualifications, functions, or duties of the occupation for which
8 a license was issued constitutes unprofessional conduct and grounds
9 for disciplinary action for any person licensed under the Medical
10 Practices Act.

11 8. Section 2234 provides that unprofessional conduct
12 includes, but is not limited to, the following:

13 "(a) Violating or attempting to violate, directly or
14 indirectly, or assisting in or abetting the violation of, or
15 conspiring to violate, any provision of this chapter.

16 (b) Gross negligence.

17 (c) Repeated negligent acts.

18 (f) Any action or conduct which would have warranted
19 the denial of a certificate."

20 9. Respondent Berlin is subject to disciplinary action
21 under section 726 of the Code in that he has committed and
22 attempted to commit acts of sexual abuse and sexual misconduct upon
23 the persons of four (4) mothers and one of his pediatric patients.
24 The circumstances are as follows:

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1 A. Respondent Berlin was the pediatrician for the child
2 of Heidi B.^{1/}

3 B. On or about January 28, 1991, during a home visit,
4 respondent did massage, place his mouth on and suck the
5 breasts of Heidi B. under the pretense of assisting the mother
6 with getting her milk to "let down". While massaging Heidi
7 B.'s breast, respondent said, "Oh, can I.....?", then put his
8 mouth to her breast.

9 C. Respondent Berlin was the pediatrician for Alexis
10 N., the child of Andrea N. Alexis N. was born June 20, 1991.

11 D. On or about July 19, 1991, during a home visit,
12 respondent did massage and touch the breasts of Andrea N.
13 under the guise of assisting the mother with getting her milk
14 to "let down". Respondent continued to massage the mother's
15 breast after she complained that it hurt and requested that
16 he stop. Respondent's face was red while he was massaging
17 the mother's breast.

18 E. On or about August 6, 1991, during an office visit,
19 respondent did massage the neck and shoulders of Andrea
20 N., touching her bare skin. Andrea N. had brought her child
21 to the office to be examined for a fever.

22

23 1. For privacy reasons, only the initials of the mothers of
24 the pediatric patients will be used in this accusation. The names
25 of the mothers will be provided to respondent in discovery, if
26 requested.
27

1 F. On several occasions, respondent squeezed the nipples
2 of the breasts of the infant, Alexis N., under the guise of
3 checking to see if the infant still had milk. Respondent
4 squeezed the infant's breasts on or about June 21, 1991, July
5 19, 1991 and August 6, 1991.

6 G. Respondent Berlin was the pediatrician for the child
7 of Janine H.

8 H. On or about June 21, 1991, during an office visit,
9 respondent, did touch and massage the back and buttocks of
10 Janine H. under the pretense of examining the mother for back
11 pain.

12 I. On or about July 1, 1991, when Janine H. took her
13 child to be examined by respondent for dry spots on his skin,
14 respondent did rub and massage the back, chest and breasts of
15 Janine H. Respondent gave no explanation for rubbing and
16 massaging the mother of his patient.

17 J. On or about July 27, 1991, during an office visit,
18 respondent dropped a stethoscope down the blouse of Janine H.,
19 then he grabbed and squeezed her breast under the guise of
20 examining her for ear pain.

21 K. Respondent Berlin was the pediatrician for the child
22 of Bren D.

23 L. On or about June 9, 1991, during an office visit,
24 respondent did massage the buttocks and inner thighs of Bren
25 D. under the pretense of calming down Bren D. during an
26 examination to determine if she had an abscessed breast.

1 10. Respondent Berlin is further subject to disciplinary
2 action under section 2234, subdivision (b), in conjunction with
3 subdivision (a), of the Code in that he has committed and attempted
4 to commit several acts of gross negligence in his treatment of four
5 (4) mothers, as well as one of, his pediatric patients set forth
6 above, including multiple acts of sexual abuse and misconduct. The
7 circumstances are as follows:

8 A. The facts and allegations set forth in paragraph
9 9, subparagraphs (A) through (L), above, and which are
10 incorporated herein by reference.

11 B. On January 28, 1991, respondent Berlin placed
12 his mouth on and sucked the breast of Heidi B., knowing that
13 Heidi B. was breast-feeding her infant daughter, Jessica B.,
14 who was respondent's pediatric patient.

15 11. Respondent Berlin is further subject to disciplinary
16 action under section 2234, subdivision (c), in conjunction with
17 subdivision (a), of the Code in that he has committed and attempted
18 to commit repeated acts of negligence in his treatment of the four
19 (4) mothers, as well as one of his patients set forth above,
20 including, but not limited to multiple acts of sexual abuse and
21 misconduct which are more fully set forth in paragraph 9,
22 subparagraphs (A) through (L) above, and incorporated herein by
23 reference.

24 //

25 //

26 //

27

1 II

2 ACTS OF DISHONESTY AND CORRUPTION

3 WITH PATIENTS

4 12. Section 2234, subdivision (e) of the Code provides
5 that unprofessional conduct includes the commission of any act
6 involving dishonesty or corruption which is substantially related
7 to the qualifications, functions, or duties of a physician and
8 surgeon.

9 13. Section 2234, subdivision (f) of the Code provides
10 that unprofessional conduct includes any action or conduct which
11 would have warranted the denial of a certificate.

12 14. Section 480, subdivision (a) (2), of the Code
13 provides, in part, that the Board may deny a license regulated by
14 this code on the grounds that the applicant has done any act
15 involving dishonesty, fraud or deceit with the intent to
16 substantially benefit himself or another, or substantially injure
17 another.

18 15. Respondent Berlin is subject to disciplinary action under
19 section 2234, subdivision (e), in conjunction with subdivision (a),
20 and section 480, subdivision (a) (2), of the Code in that he has
21 committed and attempted to commit several acts involving dishonesty
22 and corruption in connection with his qualifications, functions and
23 duties as a physician and surgeon as is more fully set forth below:

24 A. The facts alleged in paragraph 9, subparagraphs
25 (A) through (L), above, are incorporated herein.

26 (B) Respondent Berlin directly and indirectly
27 misrepresented to Heidi B., Andrea N., Bren D., and Janine

1 Hansell, mothers of his pediatric patients that his conduct
2 as set forth in paragraph 9, above, was necessary and was part
3 of their treatment and/or treatment for their infants.

4 C. Respondent falsely represented to Heidi B. and
5 Andrea Neiers, mothers of his pediatric patients, that he
6 (respondent) needed to make home visits to avoid contaminating
7 the infants with germs from his office where he regularly
8 examined and treated his pediatric patients.

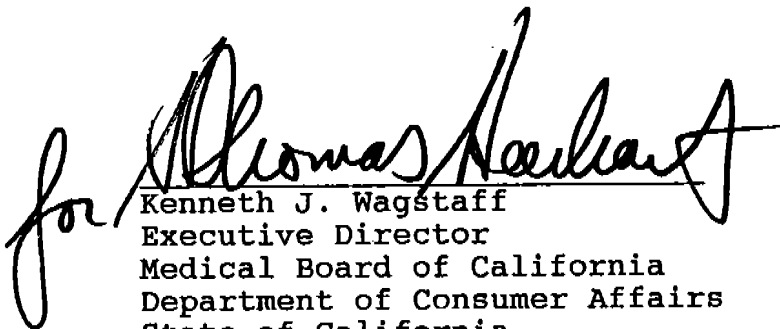
9 PRAYER

10 WHEREFORE, the complainant requests that a hearing be
11 held on the matters herein alleged, and that following said
12 hearing, the Board issue a decision:

13 1. Revoking or suspending Physicians and Surgeons
14 Certificate Number G-48756, heretofore issued to respondent Stuart
15 Mark Berlin M.D.;

16 2. Taking such other and further action as the Board
17 deems proper.

18 DATED: June 24, 1992.

19
20
21 
22 Kenneth J. Wagstaff
23 Executive Director
24 Medical Board of California
25 Department of Consumer Affairs
26 State of California

27 Complainant

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 ROSA M. MOSLEY,
Deputy Attorney General
3 California Department of Justice
300 South Spring Street, 10th Floor-North
4 Los Angeles, California 90013-1204
Telephone: (213) 897-2567

5 Attorneys for Complainant
6

7 **BEFORE THE**
8 **MEDICAL BOARD OF CALIFORNIA**
9 **DIVISION OF MEDICAL QUALITY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation)
Against:)

12 STUART MARK BERLIN M.D.)
13 31926 Watergate Court)
Westlake, California 91361)

14 Physicians and Surgeons Certificate)
15 No. G-48756; License to Supervise)
16 Physician Assistants No. SA 14082,)
Respondent.)

NO. D-4797

AMENDED AND
SUPPLEMENTAL
ACCUSATION

17 The Complainant alleges:
18

19 **PARTIES**

20 16. Complainant, Kenneth J. Wagstaff, is the Executive
21 Director of the Medical Board of California (hereinafter the
22 "Board") and brings this Amended and Supplemental Accusation solely
in his official capacity.

23 17. On or about August 30, 1982, Physicians and Surgeons
24 Certificate No. G-48756 was issued by the Board to Stuart Mark
25 Berlin, M.D. (hereinafter "respondent"), and at all times relevant
26 to the charges brought herein, said license has been in full force
27

1 and effect. His current license expires October 31, 1993. The
2 respondent is also approved to supervise physician assistants,
3 holding license number SA 14082.

4 18. On or about June 24, 1992, an Accusation was filed
5 in case number D-4797. Said Accusation is hereby incorporated by
6 reference as though fully set forth herein. No hearing on said
7 Accusation has taken place to date.

8 JURISDICTION

9 19. This Amended and Supplemental Accusation is brought
10 under the authority of the following sections of the California
11 Business and Professions Code (hereinafter the "Code"):

12 20. Section 2220 of the Code provides that the Division
13 of Medical Quality, a division of the Board, may take action
14 against licensees who are guilty of violating the Medical Practice
15 Act.

16 21. Section 2227 of the Code provides that the Board may
17 revoke, suspend for a period not to exceed one year, or place on
18 probation, the license of any licensee who has been guilty under
19 the Medical Practice Act.

20 22. Section 11507 of the Government Code (the
21 Administrative Procedure Act) provides that at any time before the
22 matter is submitted for decision the agency may file or permit the
23 filing of an amended or supplemental accusation.

24 23. Section 2234 of the Code provides that
25 unprofessional conduct includes, but is not limited to, the
26 following:

27

1 "(a) Violating or attempting to violate, directly or
2 indirectly, or assistant in or abetting the violation of, or
3 conspiring to violate, any provision of this chapter.

4 (b) Gross negligence.

5 (c) Repeated negligent acts.

6 (d) Incompetence.

7 (e) The commission of any act involving dishonesty or
8 corruption which is substantially related to the
9 qualifications, functions, or duties of a physician and
10 surgeon.

11 (f) Any action or conduct which would have warranted the
12 denial of a certificate.

13 24. Section 726 of the Code provides that the commission
14 of any act of sexual abuse, misconduct, or relations with a
15 patient, client, or customer which is substantially related to the
16 qualifications, functions, or duties of the occupation for which
17 a license was issued constitutes unprofessional conduct and grounds
18 for disciplinary action for any person licensed under the Medical
19 Practice Act.

20 FURTHER CAUSES OF ACTION

21 I

22 ADDITIONAL ACTS OF SEXUAL ABUSE AND MISCONDUCT

23 25. Respondent Berlin is subject to disciplinary action
24 under sections 726 and 2234, subdivision (b) of the Code, in
25 conjunction with subdivision (a) of the Code, in that he has
26 committed and attempted to commit acts of sexual abuse and sexual
27 misconduct upon the person of the mother of one of his pediatric

1 patients. The circumstances are as follows:

2 A. Complainant incorporates by reference the
3 allegations contained in paragraph 9 of the original
4 Accusation No. D-4797 in its entirety as though fully set
5 forth herein.

6 B. Respondent Berlin was the pediatrician for the
7 child, a newborn of Judy O.^{1/}

8 C. On or about April 27, 1990, during an office
9 visit, respondent massaged the shoulders and breasts of Judy
10 O. under the pretense of giving Judy O. a back rub.
11 Respondent then kissed Judy O. on the lips twice with an open
12 mouth.

13 D. On several occasions, respondent squeezed the
14 nipples of the breast of Judy O.'s infant, born April 11,
15 1990, under the guise of checking to see if the infant still
16 had milk in her breasts. Respondent squeezed the infant's
17 breasts on or about April 12, 1990, April 17, 1990, April 21,
18 1990, April 26, 1990 and April 27, 1990.

19 II

20 REPEATED ACTS OF NEGLIGENCE

21 26. Respondent Berlin is further subject to disciplinary
22 action under section 2234, subdivision (c), in conjunction with
23 subdivision (a), of the Code in that he has committed and attempted
24 to commit repeated acts of negligence in his treatment of the
25

26 1. For privacy reasons, only the initials of the last
27 names of the mothers of the pediatric patients will be used in
this Accusation. The full names of the mothers will be provided
to respondent in discovery, if requested.

1 mothers of his pediatric patients, as well as his patients,
2 including, but not limited to multiple acts of sexual abuse and
3 misconduct. The circumstances are as follows:

4 A. The facts and allegations set forth in
5 paragraphs 9, and 10 of Accusation No. D-4797, including any
6 subparagraphs are incorporated herein by reference.

7 B. The facts and allegations as set forth in
8 paragraph 25 above, including any subparagraphs, are
9 incorporated herein by reference.

10 PRAYER

11 WHEREFORE, the complainant requests that a hearing be
12 held on the matters herein alleged, and that following said
13 hearing, the Board issue a decision:

14 1. Revoking or suspending Physicians and Surgeons
15 Certificate Number G-48756, heretofore issued to respondent, Stuart
16 Mark Berlin M.D.;

17 2. Revoking Supervisor Physician Assistant license
18 number SA 14082, heretofore issued to respondent, Stuart Mark
19 Berlin, M.D.;

20 3. Taking such other and further action as the Board
21 deems proper.

22 DATED: November 6, 1992.

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AMERICAN MEDICAL ASSOCIATION
STATE OF CALIFORNIA
Kenneth P. Wagstaff
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 ROSA M. MOSLEY,
Deputy Attorney General
3 California Department of Justice
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4 Los Angeles, California 90013-1204
Telephone: (213) 897-2567
5 Attorneys for Complainant

6
7 **BEFORE THE**
8 **DIVISION OF MEDICAL QUALITY**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation) NO. D-4797
Against:) OAH No. L-60597
12)
13 **STUART MARK BERLIN, M.D.**)
31926 Watergate Court) **SECOND AMENDED**
Westlake, California 91361) **AND SUPPLEMENTAL**
14) **ACCUSATION**
Physician's and Surgeon's)
15 Certificate No. G-48756; License to)
Supervise Physician Assistants No.)
16 14082,)
Respondent.)

17
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19 The Complainant alleges:

20 **PARTIES**

21 27. Complainant, Dixon Arnett, is the Executive
22 Director of the Medical Board of California (hereinafter the
23 "Board") and brings this Second Amended and Supplemental
24 Accusation solely in his official capacity.

25 28. On or about August 30, 1982, Physician's and
26 Surgeon's Certificate No. G-48756 was issued by the Board to
27 Stuart Mark Berlin, M.D. (hereinafter "respondent"), and at all

1 times relevant to the charges brought herein, this license has
2 been in full force and effect until it was suspended on June 16,
3 1992 pursuant to an order for petition for interim suspension of
4 license. Respondent's license number SA 14082 to supervise
5 physician assistants was also suspended on June 16, 1992 pursuant
6 to order.

7 29. On or about June 24, 1992, an Accusation was filed
8 in OAH case number L-60597. On or about November 7, 1992, an
9 Amended and Supplemental Accusation was filed in OAH case number
10 L-60597. The Accusation and Amended and Supplemental Accusation
11 are hereby incorporated by reference as though fully set forth
12 herein.

13 JURISDICTION

14 30. This Second Amended and Supplemental Accusation is
15 brought before the Division of Medical Quality of the Medical
16 Board of California Department of Consumer Affairs (hereinafter
17 the "Division"), under the authority of the following sections of
18 the California Business and Professions Code (hereinafter
19 "Code"):

20 A. Section 2227 of the Code provides that the
21 Board may revoke, suspend for a period not to exceed
22 one year, or place on probation, the license of any
23 licensee who has been found guilty under the Medical
24 Practice Act.

25 B. Section 11507 of the Government Code (the
26 Administrative Procedure Act) provides that at any time
27 before the matter is submitted for decision the agency

1 may file or permit the filing of an amended or
2 supplemental accusation.

3 C. Section 2236 of the Code provides, in
4 pertinent part:

5 "(a) The conviction of any offense substantially
6 related to the qualifications, functions, or duties of a
7 physician and surgeon constitutes unprofessional conduct
8 within the meaning of this chapter. The record of
9 conviction shall be conclusive evidence only of the fact
10 that the conviction occurred.

11 (b) The division may inquire into the
12 circumstances surrounding the commission of the crime in
13 order to fix the degree of discipline or to determine if
14 such conviction is of an offense substantially related to
15 the qualifications, functions, or duties of a physician and
16 surgeon. A plea or verdict of guilty or a conviction
17 following a plea of nolo contendere made to a charge
18 substantially related to the qualifications, functions, or
19 duties of a physician and surgeon is deemed to be a
20 conviction within the meaning of this section.

21 (c) Discipline may be ordered in accordance with
22 Section 2227 . . . when the time for appeal has elapsed, or
23 the judgment of conviction has been affirmed on appeal or
24 when an order granting probation is made suspending the
25 imposition of sentence, irrespective of a subsequent order
26 under the provisions of Section 1203.4 of the Penal Code
27 allowing such person to withdraw his or her plea of guilty

1 and to enter a plea of not guilty, or setting aside the
2 verdict of guilty, or dismissing the accusation, complaint,
3 information, or indictment."

4 D. Section 490 of the Code provides that the
5 Board may suspend or revoke a license on the ground
6 that the licensee has been convicted of a crime which
7 is substantially related to the qualifications,
8 functions, or duties of the business or profession for
9 which the license was issued.

10 E. Section 125.3 of the Code provides that the
11 Board may request the administrative law judge to
12 direct any licensee found to have committed a
13 violation or violations of the licensing act to pay the
14 Board a sum not to exceed the reasonable costs of the
15 investigation and enforcement of the case.

16 FURTHER CAUSES FOR DISCIPLINARY ACTION

17 (Convictions of Crimes)

18 31. Respondent is subject to disciplinary action under
19 sections 2236 and 490 of the Code, in that he was convicted of
20 crimes which are substantially related to the qualifications,
21 functions, or duties of a physician and surgeon. The
22 circumstances are as follows:

23 October 30, 1992 Conviction

24 A. On or about July 23, 1992 a complaint was
25 filed in the matter of *People v. Stuart Mark Berlin*,
26 Case No. 92C006952, in the Ventura County Municipal
27 Court, charging respondent with committing sexual

1 battery in violation of Penal Code section 243.4,
2 subdivision (d).

3 B. On or about October 30, 1992, respondent was
4 convicted of three counts of violating Penal Code
5 section 243.4, subdivision (d), and was ordered to
6 serve 180 days in the county jail, was fined \$2000 and
7 was placed on three years probation.

8 October 25, 1994 Conviction

9 A. On or about March 25, 1992, a complaint was
10 filed in the matter of *People v. Stuart Mark Berlin*,
11 Case No. 92C00264, in the Municipal Court of Malibu
12 Judicial District, County of Los Angeles, charging
13 respondent with committing sexual battery in violation
14 of Penal Code section 243.4, subdivision (d).

15 B. On or about October 25, 1994, respondent was
16 convicted pursuant to a plea of nolo contendere of one
17 count of violating Penal Code section 243.4,
18 subdivision (d) and was ordered to serve 30 days in the
19 county jail and was placed on three years probation.

20 PRAYER

21 WHEREFORE, Complainant requests that a hearing be held
22 on the matters herein alleged, and that following the hearing,
23 the Division issue a decision:

24 1. Revoking or suspending Physician's and Surgeon's
25 Certificate No. G-48756 heretofore issued to respondent Stuart
26 Mark Berlin, M.D.;

27 2. Revoking Supervisor Physician Assistant License

1 Number SA 14082 heretofore issued to respondent Stuart Mark
2 Berlin, M.D.;

3 3. Ordering respondent to pay the Division the actual
4 and reasonable costs of the investigation and enforcement of this
5 case, pursuant to section 125.3; and

6 4. Taking such other and further action as the
7 Division deems necessary and proper.

8 DATED: May 19, 1995

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10 for Ross D. Arnett, DAE
11 Dixon Arnett
12 Executive Director
13 Medical Board of California
14 Department of Consumer Affairs
15 State of California

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20 Complainant
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